§ 312.305 Requirements for all expanded access uses.

The criteria, submission requirements, safeguards, and beginning treatment information set out in this section apply to all expanded access uses described in this subpart. Additional criteria, submission requirements, and safeguards that apply to specific types of expanded access are described in §§ 312.310 through 312.320.

(a) *Criteria.* FDA must determine that:

(1) The patient or patients to be treated have a serious or immediately life-threatening disease or condition, and there is no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the disease or condition;

(2) The potential patient benefit justifies the potential risks of the treatment use and those potential risks are not unreasonable in the context of the disease or condition to be treated; and

(3) Providing the investigational drug for the requested use will not interfere with the initiation, conduct, or completion of clinical investigations that could support marketing approval of the expanded access use or otherwise compromise the potential development of the expanded access use.

(b) *Submission.* (1) An expanded access submission is required for each type of expanded access described in this subpart. The submission may be a new IND or a protocol amendment to an existing IND. Information required for a submission may be supplied by referring to pertinent information contained in an existing IND if the sponsor of the existing IND grants a right of reference to the IND.

(2) The expanded access submission must include:

(i) A cover sheet (Form FDA 1571) meeting the requirements of § 312.23(a);

(ii) The rationale for the intended use of the drug, including a list of available therapeutic options that would ordinarily be tried before resorting to the investigational drug or an explanation of why the use of the investigational drug is preferable to the use of available therapeutic options;

(iii) The criteria for patient selection or, for an individual patient, a description of the patient's disease or condition, including recent medical history and previous treatments of the disease or condition;

(iv) The method of administration of the drug, dose, and duration of therapy;

(v) A description of the facility where the drug will be manufactured;

(vi) Chemistry, manufacturing, and controls information adequate to ensure the proper identification, quality, purity, and strength of the investigational drug;

(vii) Pharmacology and toxicology information adequate to conclude that the drug is reasonably safe at the dose and duration proposed for expanded access use (ordinarily, information that would be adequate to permit clinical testing of the drug in a population of the size expected to be treated); and

(viii) A description of clinical procedures, laboratory tests, or other monitoring necessary to evaluate the effects of the drug and minimize its risks.

(3) The expanded access submission and its mailing cover must be plainly marked ''EXPANDED ACCESS SUBMISSION.'' If the expanded access submission is for a treatment IND or treatment protocol, the applicable box on Form FDA 1571 must be checked.

(c) *Safeguards.* The responsibilities of sponsors and investigators set forth in subpart D of this part are applicable to expanded access use under this subpart as described in this paragraph.

(1) A licensed physician under whose immediate direction an investigational drug is administered or dispensed for an expanded access use under this subpart is considered an *investigator*, for purposes of this part, and must comply with the responsibilities for investigators set forth in subpart D of this part to the extent they are applicable to the expanded access use.

(2) An individual or entity that submits an expanded access IND or protocol under this subpart is considered a *sponsor*, for purposes of this part, and must comply with the responsibilities for sponsors set forth in subpart D of this part to the extent they are applicable to the expanded access use.

(3) A licensed physician under whose immediate direction an investigational drug is administered or dispensed, and

who submits an IND for expanded access use under this subpart is considered a *sponsor-investigator*, for purposes of this part, and must comply with the responsibilities for sponsors and investigators set forth in subpart D of this part to the extent they are applicable to the expanded access use.

(4) *Investigators.* In all cases of expanded access, investigators are responsible for reporting adverse drug events to the sponsor, ensuring that the informed consent requirements of part 50 of this chapter are met, ensuring that IRB review of the expanded access use is obtained in a manner consistent with the requirements of part 56 of this chapter, and maintaining accurate case histories and drug disposition records and retaining records in a manner consistent with the requirements of § 312.62. Depending on the type of expanded access, other investigator responsibilities under subpart D may also apply.

(5) *Sponsors.* In all cases of expanded access, sponsors are responsible for submitting IND safety reports and annual reports (when the IND or protocol continues for 1 year or longer) to FDA as required by §§ 312.32 and 312.33, ensuring that licensed physicians are qualified to administer the investigational drug for the expanded access use, providing licensed physicians with the information needed to minimize the risk and maximize the potential benefits of the investigational drug (the investigator's brochure must be provided if one exists for the drug), maintaining an effective IND for the expanded access use, and maintaining adequate drug disposition records and retaining records in a manner consistent with the requirements of § 312.57. Depending on the type of expanded access, other sponsor responsibilities under subpart D may also apply.

(d) *Beginning treatment*—(1) *INDs.* An expanded access IND goes into effect 30 days after FDA receives the IND or on earlier notification by FDA that the expanded access use may begin.

(2) *Protocols.* With the following exceptions, expanded access use under a protocol submitted under an existing IND may begin as described in § 312.30(a).

(i) Expanded access use under the emergency procedures described in § 312.310(d) may begin when the use is authorized by the FDA reviewing official.

(ii) Expanded access use under § 312.320 may begin 30 days after FDA receives the protocol or upon earlier notification by FDA that use may begin.

(3) *Clinical holds.* FDA may place any expanded access IND or protocol on clinical hold as described in § 312.42.

§ 312.310 Individual patients, including for emergency use.

Under this section, FDA may permit an investigational drug to be used for the treatment of an individual patient by a licensed physician.

(a) *Criteria.* The criteria in § 312.305(a) must be met; and the following determinations must be made:

(1) The physician must determine that the probable risk to the person from the investigational drug is not greater than the probable risk from the disease or condition; and

(2) FDA must determine that the patient cannot obtain the drug under another IND or protocol.

(b) *Submission.* The expanded access submission must include information adequate to demonstrate that the criteria in § 312.305(a) and paragraph (a) of this section have been met. The expanded access submission must meet the requirements of § 312.305(b).

(1) If the drug is the subject of an existing IND, the expanded access submission may be made by the sponsor or by a licensed physician.

(2) A sponsor may satisfy the submission requirements by amending its existing IND to include a protocol for individual patient expanded access.

(3) A licensed physician may satisfy the submission requirements by obtaining from the sponsor permission for FDA to refer to any information in the IND that would be needed to support the expanded access request (right of reference) and by providing any other required information not contained in the IND (usually only the information specific to the individual patient).

(c) *Safeguards.* (1) Treatment is generally limited to a single course of